3298.

SUPREME COURT OF THE UNITED STATES.

No. 99.

JOSEPH GINTARD, FREDERICK STENDEMAN, AND MARY HIS WIFE, AND GEORGE BROWN, AND JULIA HIS WIFE, PLAINTIFFS IN ERROR,

vs.

HENRY STODDARD.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF MISSOURI.

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GIDEON, print.

THE UNITED STATES OF AMERICA,
Eighth circuit, Missouri district, set.

Pleas before the honorable Robert W. Wells, one of the judges of the circuit court of the United States of America, in and for the Missouri district, on the day of , A. D. 1853.

JOSEPH GINTARD, Frederick Stendeman, and Mary Stendeman his wife, George Brown, and Julia Brown his wife, plaintiffs,
against
HENRY STODDARD, defendant.
} In ejectment.

Be it remembered, that on the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and fifty-three, came the plaintiffs aforesaid, by their attorney, and filed in the clerk's office of the eighth circuit court of the United States, for the Missouri district, the following transcript of a record, to wit:

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that heretofore, to wit, on the twenty-eighth day of August, A. D. eighteen hundred and fifty-two, there was filed in the office of the clerk of the St. Louis court of common pleas, within and for the county aforesaid, a petition in words and figures following, to wit:

State of Missouri.—In the St. Louis court of common pleas, for the county of St. Louis, September term, A. D. 1852.

Petition.

JOSEPH GINTARD, Frederick Stendeman, and Mary Stendeman his wife, George Brown, and Julia Brown his wife, plaintiffs,
against
HENRY STODDARD, defendant.

Plaintiffs state that they are the owners in fee simple of the following piece or parcel of land lying in the county of St. Louis, State of Missouri, to wit: A piece of land commencing at a point on the north side of Laclede avenue, five feet fifty-three inches east from the junction of Laclede and Leffingwell avenues, it being the southeast corner of block

No. 24, in what is known as the "Stoddard addition" to the city of St. Louis; runs thence north parallel to Leffingwell avenue one hundred and seventy-two feet six inches to a point; thence west along a line parallel to Laclede avenue one hundred and twenty-five feet to a point; thence south along a line parallel to Leffingwell avenue one hundred and seventy-two feet six inches to the line of Laclede avenue; thence east along that line one hundred and twenty-five feet to the beginning; it being part of block No. 24 in what is known as the Stoddard addition to St. Louis.

Plaintiffs state that defendant is in possession of said land, and this suit is instituted to eject *them* and give the possession to plaintiffs, to which they say they are lawfully entitled. Plaintiffs state that Paul Gintard, deceased, who departed this life in St. Louis about the year 1824 or 1825, was formerly and anciently an inhabitant of the Spanish town of St. Louis, now city of St. Louis, and that prior to the 20th day of December, 1803, he claimed and cultivated a piece of land lying in what was then called "Cul de Sac," and known as a Cul de Sac field, containing one arpent in front on the east end by forty arpens in length towards the west, making, in superficies, forty arpens of land, which was bounded on the east by the fields of the St. Louis prairie, or Prairie Grange de Terre, on the north by a Cul de Sac field then claimed and cultivated by Baptiste Rivierre; on the west by the then king's domain, and on the south by a Cul de Sac field then claimed and cultivated by Madame Camp, at present known as part of the Chouteau mill tract. Plaintiffs state, that by virtue of the said cultivation of said Cul de Sac field of forty arpens of land, the same was confirmed or granted to said Paul Gintard by the act of Congress approved 13th June, 1812, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri." Plaintiffs state, that the tract of land first above described as being in the possession of defendant, lies within and forms a portion of the said Gintard Cul de Sac field confirmed as aforesaid. Plaintiffs state that said Paul Gintard, on the eleventh day of January, 1822, executed and delivered a deed to Vincent Gintard, jun., his grandson, by which he conveyed to him, among other things, said forty arpens of land above described as a Cul de Sac field, which deed is recorded in the office of the recorder of land titles for St. Louis county, in book K, page 435, the original of which not being in the possession, knowledge, or control of plaintiffs, they file herewith a certified copy thereof. Plaintiffs state that Vincent Gintard, jun., departed this life on or about the day of , 18 , leaving as his only children and heirs at law three sons and two daughters, to wit: Henry and Theodore, both of whom have since died without children, they never having married; Joseph, one of the plaintiffs; Julia, who is the lawful wife of George Brown, and Mary, who is the lawful wife of Frederick Stendeman, all of whom are plaintiffs, and say they are the legal owners of the land, and the proper parties to bring this suit; and they ask judgment for the possession of the land above described as in the

possession of defendant, together with a judgment for rents and profits according to law against defendant.

WILLIS L. WILLIAMS,
Attorney for plaintiffs.

JOSEPH GINTARD,
FREDERICK STENDEMAN,
and Mary his wife,
GEORGE BROWN,
and Julia his wife.

STATE OF MISSOURI,
St. Louis county, sct.

Joseph Gintard, one of the above named plaintiffs, this day made oath that the foregoing petition, and the facts as therein stated, he believes to be true.

JOSEPH GINTARD.

Signed and sworn to this 23d day of August, 1852, before me,
JOHN BLACK,
Justice of the peace, St. Louis county, Missouri.

Summons.

The State of Missouri to the sheriff of St. Louis county, greeting:

We command you to summon Joseph Gintard, Frederick Stendeman, and Mary Stendeman his wife, George Brown, and Julia Brown his wife, to appear before the judge of our St. Louis court of common pleas on the first day of the next term thereof, to be held at the city of St. Louis, within and for the county of St. Louis, on the third Monday of September next, then and there to answer the complaint of Henry Stoddard, as set forth in the annexed petition. And have you then there this writ.

Witness Philip Tippett, clerk of our said court, with the seal thereof hereto affixed at office in the city of St. Louis, this 28th day
[SEAL.] of August, in the year of our Lord one thousand eight hundred and fifty-two.

P. TIPPETT, *Clerk.*

Sheriff's Return.

Defendant, Henry Stoddard, not found in my county. September 20th, 1852.

JNO. M. WYMER, *Sheriff,*
By JOHN H. WATSON, *Deputy.*

Petition of Stoddard.

And afterwards, to wit, on the sixth day of October, eighteen hundred and fifty-two, the following petition was filed, and is in words and figures following, to wit:

JOSEPH GINTARD, Frederick Stendeman and Mary his wife, George Brown and Julia his wife,
vs.
HENRY STODDARD.

To the St. Louis court of common pleas.

The petition of Henry Stoddard represents to said court that the plaintiffs in the above entitled cause, having instituted a suit at law in the St. Louis court of common pleas against your petitioner, by petition to recover a tract or parcel of land situate in the county of St. Louis, which tract or parcel of land is described in said petition, and which tract or parcel of land your petitioner avers exceeds in value the sum of fifteen hundred dollars. Your petitioner further represents that the said plaintiffs are citizens of the State of Missouri, and your petitioner is a citizen of the State of Ohio. Your petitioner hereby enters his appearance in said suit, and prays that the said petition of the plaintiffs may be certified to the circuit court of the United States for the district of Missouri, there to be tried in conformity with the law in such cases provided, and your petitioner hereby offers good and sufficient security that he will enter his appearance in the said suit, before the said circuit court of the United States, on the first day of its next session, to be holden at St. Louis, in said district, on the first Monday in the month of April next.

HENRY STODDARD.

Subscribed and sworn to before me, this 6th day of October, 1852.
P. TIPPETT, *Clerk.*

And afterwards, to wit, on the same day and year last aforesaid, the following proceedings were had herein in our said court, in words and figures as follows, to wit:

Order changing venue.

JOSEPH GINTARD, FREDERICK STENDEMAN and MARY his wife, GEORGE BROWN and JULIA his wife,
vs.
HENRY STODDARD.

Now, at this day, comes the defendant and enters his appearance in this cause, and presents his petition, verified by his affidavit, to this court, asking that the said cause, for the reasons stated in said petition, be certified *be certified* to the circuit court of the United States for the district of Missouri, and it appearing by said petition to the satisfaction of this court that the defendant is a citizen of the State of Ohio, and that the matter in dispute in said suit is worth more than the sum of five hundred dollars exclusive of costs, and the said Henry Stoddard having filed his bond with security satisfactory to the court, conditioned

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in conformity with the law in such case provided, that he will enter his appearance on the first day of the next term of said United States circuit court, to be holden on the first Monday in the month of April next, it is ordered by the court that the said suit be and the same is hereby certified to the said circuit court of the United States, in conformity with the statute of the United States in such cases provided. And the following is the bond, to wit:

Bond.

Know all men by these presents, that we, Henry Stoddard as principal, and John M. Krum as security, are held and firmly bound unto Joseph Gintard, Frederick Stendeman and Mary Stendeman his wife, George Brown and Julia Brown his wife, in the sum of five hundred dollars, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs and assigns, firmly, by these presents; sealed with our seals, this 5th day of October, 1852. The condition of this obligation is such, that whereas the said obligees have instituted a suit by petition in the St. Louis court of common pleas, against the said Henry Stoddard, to recover possession of a certain tract of land mentioned in said petition; and whereas the said Henry Stoddard has presented his petition to said court of common pleas, praying that said suit may be certified to the circuit court of the United States for the district of Missouri, in conformity with the laws of the United States in such cases provided; and whereas the prayer of the petition of said Henry Stoddard has been granted: Now, if said Henry Stoddard shall enter his appearance to the said suit of said obligees in the said United States circuit court, on the first day of its next session, to be holden on the first Monday in the month of April next, then this obligation shall be void, otherwise to remain in force.

HENRY STODDARD, [SEAL.]
JOHN M. KRUM, [SEAL.]

Approved. Attest: P. TIPPETT, *Clerk.*

Certificate to transcript.

STATE OF MISSOURI, *county of St. Louis, ss.*

I, Philip Tippett, clerk of the St. Louis court of common pleas within and for the county aforesaid, hereby certify the foregoing to be a true, full, and correct transcript of the record and proceedings in the case of Joseph Gintard et als. *vs.* Henry Stoddard, as the same remains in my office. In testimony whereof I hereto set my hand and affix the seal of said court at office, in the city of St. Louis, this 20th day of January, A. D. 1853.

[SEAL.] P. TIPPETT, *Clerk.*

Deed.—Paul Gintard to Vincent Gintard.

The deed from Paul Gintard to Vincent Gintard, referred to in the foregoing transcript, is in the words and figures following, to wit:

Know all men who shall see these presents, that all the undersigned

and undersealed Paul Gintard, father, and Angelique his wife, of the city and county of St. Louis, State of Missouri, for and in considerations of the conditions and stipulations hereinafter mentioned, as also for the sum of five dollars, legal currency of the United States, which have been to us duly paid before the signing and delivery of these presents by our grandson Vincent Gintard, *son*, as we hereby acknowledge, and for which he hereby gives him entire acquittance and discharge, we have sold, ceded, transferred and abandoned, as in fact and by these we do sell, cede, transfer and abandon to the said Mr. Vincent Gintard, jr., all the property, real and foncieries, which we now possess, or to which we may hereafter acquire right, in whatsoever place they may be situated, and especially the lot which we now possess in the city of St. Louis, having a front of sixty feet on a cross street, by one hundred and twenty feet, French measure, bounded west by a lot belonging to Bebee, and east by lot belonging to Surgenett, to the said M. Vincent Gintard, jr., his heirs and assigns; to have and to hold the lot above described, with all the rights, privileges, and dependencies which belong or can appertain to said lot. Also all other property to which we can have right, of whatever nature it may be, and as things legitimately belonging to him, just as we would or could have possessed them ourselves. This present sale is made on the following conditions: that the said Vincent Gintard, jr., promises and formally engages, under pain of the entire nullity of these presents, to furnish and procure for the said Paul Gintard, father, and to the lady Angelique his wife, during their life, and to the survivor of them, all their reasonable wants, such as lodging, board, clothing, washing, wood; and generally to keep them supplied with all things necessary to their existence, as a good son should take care of his father and mother; in witness of which the said M. Paul Gintard, father, and the lady Angelique his wife, of the one part, and M. Vincent Gintard, jr., have signed and sealed this present act, after it had been read to them, at St. Louis, this 11th January, 1822.

PAUL his ⋈ mark. GINTARD, [SEAL.]

D'ANGELIQUE her ⋈ mark. GINTARD, [SEAL.]

VINCENT his ⋈ mark. GINTARD, JR., [SEAL.]

Signed and sealed in presence of—
P. PROVENCHAL,
J. N. GARNIER.

STATE OF MISSOURI, *county of St. Louis:*

Be it remembered that on the eleventh day of January, in the year one thousand eight and twenty-two, personally appeared before me, Joseph N. Garnier, a justice of the peace in and for the county

aforesaid, Paul Gintard, sen'r, Angelique his wife, and Vincent Gintard, jun'r, and acknowledged the foregoing instrument of writing as their act and deed, by them signed and sealed for the purposes therein mentioned; and the said Angelique, wife of Paul Gintard, sen'r, being by me examined separately and apart from her said husband, declares and acknowledges to have executed the same of her own free will and accord, without compulsion, fear, restraint, or undue influence of her said husband. In testimony whereof I have hereunto set my hand and seal, day and date aforesaid.

J. N. GARNIER, [SEAL.]

Recorded this 13th day of January, 1822.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI,
County of St. Louis:

I, the undersigned recorder in and for the county aforesaid, do hereby certify the foregoing to be a full and complete copy of an instrument of writing, and also of the certificate of acknowledgment and of the date of recording thereof, as fully as the same remains of record in my office in book K, pages 435 and 436. Witness my hand and official seal, the 11th day of August, 1852.

[L. S.] S. D. BARLOW, *Recorder.*

Judgment of circuit court U. S., Missouri district.

Afterwards, on Friday, May 6th, 1853, the following proceedings were had in this case, to wit:

JOSEPH GINTARD and others, plaintiffs,
ag'st
HENRY STODDARD, defendant. } Ejectment.

This day come the parties by their attorneys, and the defendant files his plea of not guilty, as charged by the plaintiffs in this suit, and both parties being ready for trial—it is ordered that a jury come; and thereupon comes said jury, viz: Thomas Andrews, H. F. Lathrop, Edward Shacklett, Albert B. Cohen, Nehemiah Wyman, George Trask, Sullivan Blood, Volney C. Musick, John Lay, Edwin H. Farnsworth, A. E. Orme, and Robert Halston, twelve good and lawful men, who being sworn well and truly to try the issue joined, returned into court the following verdict: "We, the jury, find the defendant not guilty." It is therefore now considered by the court that the plaintiffs take nothing by their writ in this case; and that the defendant, Henry Stoddard, go hence without day, and recover against the said plaintiffs, Joseph Gintard, Frederick Stendeman, Mary Stendeman, George Brown and Julia Brown, the costs in this behalf expended, and that execution issue therefor.

Plea N. G.

The plea of "not guilty" is as follows, to wit:

In the circuit court U. S., district of Missouri.

JOSEPH GINTARD and others, pl'ffs,
vs.
HENRY STODDARD.

The defendant comes and for plea says, that he is not guilty in the manner and form as the plaintiffs have alleged against and of this he puts himself upon the country.

KRUM & HARDING,
Att'ys for pl'ff.

Bill of exceptions filed.

Afterwards, on Tuesday, May 10th, 1853, the following order was made in this case:

JOSEPH GINTARD and others,
ag'st
HENRY STODDARD. } Ejectment.

This day comes the plaintiff by his attorney, and files his bill of exceptions, which was allowed by the court, signed, sealed, and ordered to be made part of the record in this case; which bill of exceptions is as follows, to wit:

Bill of exceptions.

STATE OF MISSOURI.

In the circuit court of the United States for the Missouri district, April term, 1853.

JOSEPH GINTARD, Frederick Stendeman, and his wife Mary Stendeman, George Brown and Julia Brown his wife, plaintiffs,
vs.
HENRY STODDARD, defendant. } Action of ejectment.

Be it remembered that on the sixth day of May, 1853, came on the above entitled cause to be tried, when the plaintiff introduced the following parol evidence, to wit: That from a period long prior to the 20th December, 1803, to wit, from 1785 or 1786, to the period when the common fence fell down, which was six or seven years before the change of government, Paul Gintard, who was then an inhabitant of St. Louis, claimed and cultivated a piece of land in what was then known as the "Cul de Sac" prairie, near St. Louis, which land was one arpent wide in front on the east, and forty arpens long towards the west. There were several persons who cultivated lands in the "Cul

de Sac," commencing on the south extreme of the prairie; the first was Matard; then going north the next was Guion; the next or third was Tabean; the fourth Joachim Roy; the fifth Madame Vachard; the sixth Madame Dubriel; the seventh Madame Verdon; the eighth Noise; the ninth Yosti; the tenth La Rochella; the eleventh Madame Camp; the twelfth Paul Gintard. The "Cul de Sac" fields laid at the end of the St. Louis prairie, forty arpent fields on the west, and they commenced about where Pratte avenue now is. The "Cul de Sac" field of Madame Camp was the north land of that part of what is called the Chouteau mill tract, west from the St. Louis prairie fields, and the north line of the Chouteau mill tract was the north line of the Madame Camp Cul de Sac field; and the same line was the south line of Paul Gintard's Cul de Sac field. The "Cul de Sac," which means "end of a sac," was formed by the hills on each side north and south and the hills on the west. The lands cultivated there were called lands of the "Cul de Sac."

There were other prairies near St. Louis, to wit: The St. Louis or Big Mound prairie, the Grand prairie and Barrier des Noyer prairie. In all of these the lands were cultivated in strips by different individuals, and they were all protected by the same fence; there was but one fence, which commenced at the half moon just north of the old Spanish town, ran thence west to a little beyond Third street, thence southwest to the fort a little south of the court-house, thence westwardly around the St. Louis and Cul de Sac fields, to the east line of the Barrier des Noyer fields, thence south along that east line, and east around the St. Louis commons to the river. This fence was a common fence and was kept up by those who cultivated the fields in the prairies, one cultivator making and mending part, and another another part, under the supervision and direction of a man who was called a Syndic. This fence kept the cattle and stock inside the commons and away from the fields that were cultivated. The St. Louis prairie fields, the Grand prairie fields, the Barrier des Noyer prairie fields, and the Cul de Sac prairie fields, were all worked at the same time, until the common fence fell down and was neglected to be repaired, and Paul Gintard cultivated the land lying adjoining and north of the said Chouteau mill tract until the common fence fell down. His cultivation was towards the west on the hill, and he did not cultivate the land on the very eastern end because it was rather low ground there. The cultivation of Gintard starting from the hill went west towards the middle of the piece of land; but how far it commenced from the eastern end, or how far it extended towards the west, was not proved. It was called Gintard's Cul de Sac field from the west end of the St. Louis prairie fields to the west end of the Chouteau mill tract, which was the west line of the Cul de Sac fields, now near the rock spring. The land sued for was proved to fall within one arpent in width, north of the Chouteau mill tract, and forty arpens in depth or length west from the St. Louis prairie fields; but whether it was a part of the very spot cultivated by Gintard was not proved. The plaintiffs introduced a deed from Paul Gintard which

conveyed all his property and rights of property in St. Louis county to his grandson, Vincent Gintard, but this specific claim was not mentioned; the deed was dated 11th January, 1822, and he died in 1823. Vincent Gintard died in 1836, leaving but three children, who are the plaintiffs and the sole representatives of their father. Vincent Gintard never in any way disposed of this land. Paul Gintard never had any concession for this land from the Spanish authorities; he never presented any claim he had to it under the act of 1812, to the recorder of land titles, nor made any claim for it before any board of commissioners. His grandson Vincent, nor none of the family, ever presented any claim to it before the recorder of land titles under the act of 26 May, 1824, nor was the land ever surveyed either by the Spanish or American Government, as a field lot. The defendant introduced a confirmation and patent, by virtue of the act of 4th July, 1836, to Mordecai Bell's representatives, and a survey of the United States which included the land in controversy and a regular chain of title to defendant. He also introduced map X, purporting to contain the out boundary lines of the surveyor general at St. Louis, projected under the 1st section of the act of 13th June, 1812, and it was proved that the land described in the declaration, but not the whole forty arpens claimed by plaintiff, lies within said out boundary lines. Plaintiff introduced an experienced surveyor, who stated that in his opinion the out boundary line as projected on map X was not correctly run under the act of 1812; that said out boundary line should have been run so as to include the out lots, common field lots, and commons in, adjoining, and belonging to St. Louis, which he thought it did not do. It did not include the Grand prairie fields or the Barrier des Noyer fields, nor the Cul de Sac fields, either as they purport to be located on the township plat of the township in which St. Louis lies, nor as proved in this suit, except about one-third of their length as proved on the eastern end, nor does it include all of the commons of St. Louis; that in his opinion an out boundary line run under the act of 1812 so as to include the out lots, common field lots, and commons of St. Louis, would necessarily include the out lots, common field lots, in all the prairie fields as laid down on the township plat and commons. And such survey would also necessarily include land that was neither out lot, common field lot, or commons.

Agreement.

It was agreed that in any court to which this action might be carried, map X and township plat, above alluded to, might be introduced and used without including them in this bill of exceptions.

It is also agreed that the property in dispute is worth more than two thousand dollars, exclusive of costs. This was all the evidence in the case, and thereupon the plaintiffs asked of the court the following instructions, viz:

Plaintiff's instructions.

1. The act of Congress of 13th June, 1812, is in its terms a grant

and confirms the right, title and claim of all town lots or village lots, out lots and common field lots, in, adjoining, and belonging to such towns and villages as are mentioned in the act, to those inhabitants of the towns and villages or to their legal representatives who inhabited, cultivated, or possessed such lots, rightfully claiming them prior to the 20th December, 1803. And the principal deputy surveyor of the Territory of Missouri was required by said act to run an out boundary of the towns and villages mentioned in said act, so as to include the out lots, common field lots, and commons thereto respectively belonging, which out boundary line should be one continuous line, and not separate surveys of the town and lots, and should include the out lots, common field lots and commons, and said towns and villages.

2. A common field lot, as intended by said act of Congress, is a piece of land of larger or smaller dimensions as the case may be, according to ancient cultivation, lying alongside of and parallel to other similar pieces of land, and claimed or cultivated under the protection of a common fence by those who inhabited said towns or villages prior to the 20th December, 1803; and said pieces of land might not have been conceded or surveyed by any French or Spanish authority, or surveyed officially by the United States as a common field lot.

3. If then the jury believe from the evidence that the land sued for formed part of a common field lot, as just defined in instruction 2, and that said common field lot was rightfully claimed, and in part or altogether cultivated prior to the 20th December, 1803, by Paul Gintard, the plaintiffs are entitled to recover, which were refused, to which plaintiffs at the time excepted, and defendant asked the following instructions:

Defendant's instructions.

1. If the jury believe from the evidence that the cultivation by Paul Gintard, testified to by the witnesses, was on a tract of land called a Cul de Sac common field, and if the jury shall also believe from the testimony that the Cul de Sac common fields, including the one cultivated by Paul Gintard, were at a place to the southwest from the premises sued for, and that neither of said Cul de Sac common fields include the premises in question, then the plaintiff cannot recover in this action.

2. If the land sued for is within and forms a part of the tract confirmed to Mordecai Bell, or his legal representatives, and within the official survey of said Mordecai Bell tract, then the defendant has shown a title in him paramount to the title of the plaintiff, and the latter cannot recover.

3. There is no evidence that Paul Gintard, under whom the plaintiff derives and claims title to the premises in question, cultivated any out lot or common field lot, nor that any one existed at the place where the cultivation that has been spoken of by plaintiffs' witnesses, existed, nor had the act of 1812 application to this land, so far as Paul Gintard and those claiming under him are concerned. The plaintiff, therefore, cannot recover in this action.

4. If the out boundary line of the town of St. Louis run under the act of Congress of 13th June, 1812, as shown by the official survey and plat, marked X, read in evidence, includes the land in controversy, then the plaintiff cannot recover. Which were given by the court; and the court of its own motion gave the following:

Instruction by the court.

"The court also instructed the jury, that there having been no concession nor grant, nor survey, nor permission to settle or cultivate, or possess the land claimed by Paul Gintard, to said Gintard, under and by the Spanish authorities or government; and no location of said claim by or under said government, nor under the French government, and no proof having been made at any time by said Paul Gintard, or those claiming under him, or any inhabitation, cultivation, or possession, or of the location and extent of said claim, either under the provisions of the act of the 13th June, 1812, or those of the act of the 26th May, 1824, either before the recorder of land titles or other U. S. authority; and there having been no survey or location of said land by or under the authority of the United States, the said plaintiffs cannot now set up said claim and locate it, and prove its extent and inhabitation and cultivation by parol evidence merely, and therefore cannot recover in this action;" to which plaintiffs also excepted at the time, and here now tender this their bill of exceptions, and pray that it be signed and sealed and made part of the record in this cause; which is done accordingly.

R. W. WELLS. [SEAL.]

MISSOURI DISTRICT, *sct.*

I, Benjamin F. Hickman, clerk of the circuit court of the United States, for the Missouri district, do certify, that the foregoing fifteen pages and upwards contain a true and perfect copy of the record in the case of Joseph Gintard and others against Henry Stoddard, as the same appears in my office.

In testimony whereof I hereunto subscribe my name, and affix the seal of said court, at office, in the city of St. Louis, this sixth day of July, A. D. 1853.

[L. S.]

BENJ. F. HICKMAN, *Clerk.*
By JOHN M. PEARSON, *D. C.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the circuit court of the United States, for the district of Missouri, greeting:

[L. S.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of the United States before you, at the April term, 1853, between Joseph Gintard,

Frederick Stendeman, and Mary Stendeman his wife, George Brown and Julia Brown his wife, plaintiffs, and Henry Stoddard, defendant, a manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court, this 10th day of May, in the year of our Lord one thousand eight hundred and fifty-three.

Issued at office, in the city of St. Louis, under the seal of the circuit court of the United States, for the Missouri district, the date last above written.

BENJ. F. HICKMAN, *Clerk.*

Allowed by me,

R. W. WELLS,
District Judge U. S., for Missouri.